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Robert B. Dunsmore

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Hospital Records as Evidence

Robert B. Dunsmore*

HOSPITAL RECORDS contain the history of illness and treatment concerning a patient, and also such facts as the names of his near relatives, his age, past physical injuries, diseases, and other operations. In addition, information as to how he entered the hospital, the place and time of the injury, the type of accident, his complaints, extent and nature of injuries, laboratory tests, x-ray, or other examinations, daily notes of nurses and attending physicians, and many other details are contained therein.¹ These are reliable records, for they are made and relied upon in affairs of life and death.²

Court decisions are not in harmony as to the admissibility of hospital charts and records as evidence in a court of law. At common law they are not recognized as valid evidence.³ In the absence of a statute requiring hospitals to keep clinical charts or records, many courts adopt the view that such a chart or record is admissible as evidence only under some exception to the Hearsay Rule and after a proper foundation has been laid for bringing the case within the particular exception. If such a foundation is laid, a hospital chart or record is, according to the majority view, competent evidence as to all matters proper for inclusion in a record of this character.⁴

The main objection to permitting these records to be put into evidence is that such records are barred by the *Hearsay Rule*. Hearsay evidence is proof of the existence of facts based not on the witness's own personal knowledge and observation but upon what someone else has said.⁵ Statements made by the witness of what he heard third persons say or what those others said to him, generally are not admissible, as the third party is not available

* B.A., Pennsylvania State Univ.; Third year student at Cleveland-Marshall Law School.

¹ Reddy v. Zurich Genl. Acc. & Liability Ins. Co., 171 Misc. 69, 11 N. Y. S. 2d 88 (1939).

² 6 Wigmore, Evidence, Sec. 1707 (3rd Ed., 1940).

³ Carol v. Pulmutter, 41 D. & C. 702, 55 York 85 (Pa. Comm. Pl., 1958). See also Austin, Hospital Records in Evidence, 13 Chi-Kent L. R. 347 (1935).

⁴ Barfield v. South Highlands Infirmary, 191 Ala. 553, 68 So. 30 (1915); Lund v. Olson, 182 Minn. 204, 234 N. W. 310 (1931). See also 25 Am. Jur., Hospitals and Asylums, Sec. 36.

⁵ Petition of Earle, —Mich.—, 95 N. W. 2d 833 (1959).

for cross-examination.⁶ The contents of a letter or writing may be hearsay if the writer is not available as a witness.⁷ Thus, when the medical record is barred as incompetent evidence in some states by the Hearsay Rule, it is on the ground that those who wrote the record cannot be cross-examined.⁸

There are exceptions to the Hearsay Rule which permit hospital records to be presented as evidence. One of these is the *Shop Book Rule*, which permits a party's books of account of original entry to be admitted in his favor under certain technical conditions, if the entries relate to sales or services. Thus a physician may testify from his account books after he has authenticated them.⁹ These records are a product of routine procedure and their accuracy is substantially guaranteed by the fact that the record is a systematic reflection of observations.¹⁰ Proof of such records by persons who made them is not necessary when the practical inconvenience outweighs the probable utility of their appearance.¹¹ The very purpose of the Shop Book Rule and other similar rules, as applied to hospital records, is to avoid expense, inconvenience and sometimes impossibility of calling as witnesses attendant nurses and physicians who collaborated to make such a record about the patient.¹²

In other cases the record has been admitted on the theory that it was a record kept in the regular course of business, which is another exception to the Hearsay Rule.¹³ Many states have, by statute, legalized the exception under the Uniform Business Records as Evidence Act.¹⁴ One of the main purposes of this Act was

⁶ *First Natl. Life Ins. Co. v. Vititow*, —Texas—, 323 S. W. 2d 313 (1959).

⁷ *Ynsfran v. Burkhart*,—Texas—, 247 S. W. 2d 907 (1952).

⁸ Hayt, Hayt and Groeschel, *Law of Hospital, Physician and Patient*, 676 (2d ed., 1952).

⁹ *Woscichowski v. States Marine Corp. of Del.*, 155 F. Supp. 874 (D. C. Md., 1957).

¹⁰ 5 Wigmore, *Evidence*, Sec. 1522 (3rd Ed., 1940).

¹¹ *Squires v. O'Connell*, 91 Vt. 35, 99 Atl. 268 (1916); *Missouri Forged Tool Co. v. St. Louis Car Co.*,—Mo.—, 205 S. W. 2d 298 (1947).

¹² *Lewis v. Woodland*, 101 Ohio App. 422, 140 N. E. 2d 322 (1955).

¹³ *Ribas v. Revere Rubber Co.*, 37 R. I. 189, 91 A. 58 (1914); *Boss v. Ill. C. R. R. Co.*, 221 Ill. App. 504 (1921); *Adler v. N. Y. Life Ins. Co.*, 33 F. 2d 827 (C. A. 8, 1929); *Pickering v. Peskivil*, 43 Ohio App. 401, 183 N. E. 301 (1933); *Mutschman v. Petry*, 40 Ohio App. 525, 189 N. E. 658 (1933); *Kellogg v. Industrial Health Comm.*, 60 Ohio App. 22, 19 N. E. 2d 511 (1938); *Conlon v. John Hancock Mutual Life Ins. Co.*, 56 R. I. 88, 183 A. 850 (1936); *Weis v. Weis*, 147 Ohio St. 416, 72 N. E. 2d 245 (1947); *Bailey v. Tennessee Coal Iron & R. Co.*, 261 Ala. 526, 75 So. 2d 117 (1954); *Williams v. Alexander*, 309 N. Y. 283, 129 N. E. 2d 417 (1955).

¹⁴ *Dimatteo v. State*, —Ohio App.—, 130 N. E. 2d 351 (1955).

to enlarge the operation of the common law rule providing for admission of business records as an exception to the Hearsay Rule; and the act is not confined to books of accounts and entries therein, but includes records of an act, condition or event.¹⁵ A hospital has been classified as a business within the purview of the act, and therefore the act governs the admissibility of hospital records as evidence.¹⁶

Other cases have held that the record may be admitted where the proper foundation has been laid.¹⁷ Since under this theory hospital records are admitted under the same rule as books of account,¹⁸ the foundation that must be laid consists of proof of their character, authenticity, correctness and regularity,¹⁹ unless the adverse party admits these matters.²⁰ Thus it would appear that where the records are identified as those of the patient by the medical record librarian of the hospital or the nurse in charge of the floor, they will be admissible.²¹

Official records are also an exception to the Hearsay Rule.²² Hospital records of public hospitals, if required to be kept by law, are admissible as public records, and as such are prima facie evidence of the facts contained therein.²³ If they are not disputed nor their genuineness questioned, the jury may not disbelieve them.²⁴ Thus, although the records are not conclusive, they may not be ignored.

¹⁵ *Childstrom v. Trojan Seed Co.*, 242 Minn. 471, 65 N. W. 2d 888 (1954).

¹⁶ *Metton v. St. Louis Public Service Co.*, —Mo.—, 251 S. W. 2d 663 (1952); *Gray v. St. Louis-San Francisco Ry. Co.*, —Mo.—, 254 S. W. 2d 577 (1952); *Allen v. Southwest Public Service Co.*, —Mo.—, 285 S. W. 2d 663 (1956). See also, *Ginsburg*; *The Admissibility of Business Records as Evidence*, 29 Neb. L. R. 60 (1950).

¹⁷ *Globe Indemnity Co. v. Reinhart*, 152 Md. 439, 137 A. 43 (1927); *Hall v. Trimble*, 104 Md. 317, 64 A. 1026 (1906); *Lund v. Olson*, 182 Minn. 204, 234 N. W. 310 (1931); *Sommer v. Guardian Life Ins. Co.*, 253 App. Div. 763, 300 N. Y. S. 938 (1937); *In re O'Grady*, 254 App. Div. 691, 3 N. Y. 2d 778 (1938); *Carney v. RKO Radio Pictures*, 78 Cal. App. 2d 659, 178 P. 2d 482 (1947); *Whittaker v. Thornberry*, 306 Ky. 830, 209 S. W. 2d 498 (1948).

¹⁸ *Kimber v. Kimber*, 317 Ill. 561, 148 N. E. 293 (1925).

¹⁹ *Worland v. McGill*, 26 Ohio App. 442, 160 N. E. 478 (1927); *Greene v. Greene*, 145 Miss. 87, 110 So. 218, 49 A. L. R. 565 (1927); *Young v. Liddington*, 50 Wash. 2d 649, 309 P. 2d 761 (1957).

²⁰ *Wise v. Fuller*, 11 Ala. App. 427, 66 So. 827 (1914); *Counts v. Quin*, —Tex. Civ. App.—, 9 S. W. 2d 394 (1927).

²¹ *In re Bush*, —D. C. App.—, 116 A. 2d 410 (1955).

²² *Bell v. Bankers Life & Casualty Co.*, 327 Ill. App. 329, 64 N. E. 2d 204 (1945); *Missouri Pacific R. Co. v. Soileau*, 265 F. 2d 90 (C. A. 5, 1959).

²³ *Truitt v. National Life & Acc. Ins. Co.*, 236 Mo. App. 1036, 161 S. W. 2d 683 (1942).

²⁴ *Ladd v. First Natl. Life Ins. Co.*, 182 La. 726, 162 So. 579 (1935).

Wide acceptance of the Model Act²⁵ and the Uniform Business Records as Evidence Act²⁶ has helped promote the trend towards recognition that hospital records are entitled to admission under the common law exception for regular business entries. Under both these acts, hospital records are prima facie evidence of the facts stated therein, and unless contradicted or impeached, are conclusive.²⁷ But, under these statutes, they must be subjected to the same tests as are applied to any other business record.²⁸

Exclusions

In those cases where such evidence has been excluded, some courts have denied their admission as evidence without indicating where such exclusion was due to the lack of a proper foundation and without intimating whether such evidence is admissible in any event.²⁹ Others have excluded it on the basis that a hospital record is protected by statutes relating to privileged communications and is therefore inadmissible in all cases where the privilege has not been waived.³⁰ Still others were excluded because they were opinionated or speculative,³¹ or included comments as to the cause of the injury and the details of the accident which were self-serving to the injured party.³² Opinions of a nurse have also been excluded³³; also remarks of a nurse³⁴,

²⁵ 28 U. S. C., Sec. 1732 (amend. 1951).

²⁶ *Watts v. Delaware Coach Co.*, 44 Del. 283, 58 A. 2d 689 (1948); *Gallagher v. Portland Traction Co.*,—Ore.—, 182 P. 2d 354 (1947); *Thompson v. Machado*, 78 Cal. App. 870, 178 P. 2d 838 (1947); *D'Amato v. Johnston*, 140 Conn. 54, 97 A. 2d 893 (1953).

²⁷ *Bell v. Bankers Life & Cas. Co.*, supra n. 22.

²⁸ *Young v. Liddington*, 50 Wash. 2d 78, 309 P. 2d 761 (1957).

²⁹ See annotations, 75 A. L. R. 378 (1931); 120 A. L. R. 1136 (1939).

³⁰ *Mass. Mutual Life Ins. Co. v. Michigan Asylum*, 178 Mich. 193, 144 N. W. 538 (1913); *Smart v. Kansas City*, 208 Mo. 162, 105 S. W. 709 (1907); *Carson v. Schoenfeld*, 166 Wis. 401, 116 N. W. 23 (1918).

³¹ *Green v. City of Cleveland*, 79 N. E. 2d 676 (1948), *affd.* 150 Ohio St. 441, 83 N. E. 2d 63 (1948); *Peagler v. Atlantic Coast Line R. Co.*, 232 S. C. 274, 107 S. E. 2d 5 (1959).

³² *Brown v. St. Paul City R. R.*, 241 Minn. 15, 62 N. W. 2d 688 (1954); *Perry v. Industrial Comm.*, 150 Ohio St. 520, 117 N. E. 2d 34 (1954); *Williams v. Alexander*, 30 N. Y. 2d 283, 129 N. E. 2d 417 (1955); *Scott v. James Gibbons Co.*, 192 Mo. 319, 64 A. 2d 117 (1949); *Boutang v. Twin City Motor Bus Co.*, 248 Minn. 240, 80 N. W. 2d 30 (1956).

³³ *Lopez v. Morrison*, 23 Cal. App. 2d 600, 134 P. 2d 311 (1943); *Anderson v. Evans*, 164 Neb. 599, 83 N. W. 2d 59 (1957).

³⁴ *In re Nickels Estate*, 321 Mich. 519, 32 N. W. 2d 733 (1948).

statements as to a patient's ability to work³⁵, and statements as to liability.³⁶

Other questions arise as to diagnosis contained in hospital records, particularly as to psychiatric conclusions, which have been excluded as matters of opinion and therefore of necessity subject to cross-examination.³⁷ However, in an action for a judgment declaring null and void the substitution of the decedent's sister as beneficiary of a life insurance policy in place of the plaintiff widow on the grounds of mental incapacity and undue influence, the court held that the defendant's objection to the introduction in evidence of the hospital records and testimony of a physician who operated on the decedent for a brain injury should be overruled.³⁸

Usually the history of the injury is considered hearsay and excluded either on the ground that it is self-serving³⁹ or that the entrant has no personal knowledge of the fact recorded.⁴⁰ Therefore a statement which is not related to the treatment or diagnosis will be excluded if offered as part of the record, even though it is admissible if testified to directly.⁴¹

Conclusions

Unless subject to specific objection, the following hospital record data are admissible: the physical examination findings,⁴² the patient's symptoms and complaints,⁴³ the treatment and progress records,⁴⁴ diagnoses by those qualified to make them,⁴⁵

³⁵ *Cohen v. Boston Edison Co.*, 322 Mass. 239, 76 N. E. 2d 716 (1948).

³⁶ *New York Life Insurance Co. v. Taylor*, 98 App. D. C. 389, 147 F. 2d 297 (1945). See also *Morgan*, *Law of Evidence*, 59 Harv. L. R. 569 (1946); *Webster*, *Evidence—Hospital Records*, 19 So. Cal. L. R. 67 (1945).

³⁷ *Reed v. Order of United Commercial Travelers*, 123 F. 2d 252 (C. A. 2d, 1941); *Becker v. United States*, 145 F. 2d 171 (C. A. 7, 1944).

³⁸ *Iovino v. Travelers Ins. Co.*, 161 N. Y. S. 2d 1018 (1956).

³⁹ *Williams v. Alexander*, *supra* n. 32.

⁴⁰ *Knudsen v. Duffee-Freeman, Inc.*, 95 Ga. 872, 99 S. E. 2d 370 (1957).

⁴¹ *Hunt*, *Admissibility of History Statements in Hospital Records under Business Entries Statute*, 47 Mich. L. R. 124 (1948).

⁴² *Baug v. Life & Cas. Ins. Co. of Tenn.*,—Mo. App.—, 299 S. W. 2d 554 (1954).

⁴³ *Polosa v. East River Management Corp.* 8 Misc. 2d 798, 160 N. Y. S. 2d 658 (1957).

⁴⁴ *Boutang v. Twin City Motor Bus Co.*, 248 Minn. 240, 80 N. W. 2d 30 (1956).

⁴⁵ *Laiho v. Sbertoli*, 9 Ill. App. 2d 416, 133 N. E. 2d 321 (1956); *Lewis v. Woodland*, *supra* n. 12.

the results of analysis and laboratory tests,⁴⁶ x-rays,⁴⁷ the behavior of the patient,⁴⁸ and those parts of the patient's history inherently necessary (or at least helpful) to the observation, diagnosis and treatment of the patient.⁴⁹

In order to be admissible, medical records must satisfy three probative requirements:

1. They must be made contemporaneously with the acts to which they purport to relate.⁵⁰
2. There must have been present at the time no contemplative motive for falsification.⁵¹
3. They must have been made by a person having knowledge of the facts set forth, or one competent to predicate a medical and scientific opinion on the facts.⁵²

⁴⁶ *Moss v. Winkler*, 4 A. D. 2d 852, 166 N. Y. S. 2d 485 (1957); *Martinez v. Williams*, —Texas Civ. App.—, 312 S. W. 2d 742 (1958).

⁴⁷ *Lewis v. Woodland*, supra n. 12.

⁴⁸ *Allen v. St. Louis Public Service Co.*, supra n. 16.

⁴⁹ *Wooten v. Life Ins. Co. of Ga.*, —Ga. App.—, 92 S. E. 2d 567 (1956); *Old v. Cooney Detective Agency*, 215 Md. 517, 138 A. 2d 889 (1958).

⁵⁰ *Joseph v. W. A. Groves Latter Day Saints Hospital*, 7 Utah 2d 39, 318 P. 2d 330 (1957).

⁵¹ *Graves v. Graves*, 184 Pa. Sup. 265, 132 A. 2d 699 (1957).

⁵² *Clewell v. Plummer*, 6 Bucks (Pa.) 152, 18 Som. 101 (1958).